The woman
593 /37 cont./ naturally enters among those having
• [586] rights. Her part is absorbed with that of the spouse in a community which is dissolved only in case of divorce. But, as one sees, the scope of this community is reduced to the conjugal couple. And then it is amenable to precise calculations in case of dissolution.

592 Thus, even when the traditionalism of the ensemble or the
178 prestige of one of the members establishes, at the echelon of the whole tigemmi, the unity of the mode of existence, manifested by the common allowance, the economic personality of the couple exists. It has not been one of the least surprises of the investigators for the census of 1952 in this region to verify that the word "foyer," /38/ takat, ar /Arabic/: kānūn, used in the formulary, was understood only as corresponding to the conjugal family in the strict sense: which means that its average number was generally only three, sometimes four, but very rarely five persons, as had been believed up to then. This economic character has evidently been reinforced by recent evolutions: that of the alimentary regime, for example, or that of the possibilities for workers' emigration.

Thus accordingly, and although it fails to note that the montagnards do not attribute the present cutting up of the foyers to any decline, to any change of the mores, this observation
[184] calls for some correctives. The domain of the a. H'adduyws,
[586] even though it is characterized by a rarer practice of divorce -- half less than among the Idma, for example -- seems to have remained more faithful to an old tradition of familial aggregates.

425 There is another point at which a recent evolution has in-
178 fluenced behavior. We shall have to speak in detail of an im-
593 portant patrimonial practice, which the new notarial regime seems to have made rarer. It is a matter of the disposition by the father of all or part of his immovables for the benefit of such and such of his heirs, in general males. The institution, somewhat imprecise today, is called, according to the case, waṣiyya, ṣṣadaqa, or even lh'obus. It would be a very interesting study to determine what might be the frequency of these anticipated successoral distributions, if I may venture to say it, by which the

[Ibuban]

/208 cont./

241 turnip crop. But, in general, nothing to anticipate other than the chances and risks of dry agriculture. Paradoxically, this peasant is put in the situation of his colleague of the plains or piedmont plateaus. But he does not have at his disposal, as he does, the compensatory resource of space. Consequently he has
245 applied himself to remedy these misfortunes, with a care deserv-
[241] ing a better fate: vast staircase of tiers as at Amassin, painstaking clearing as at Iggayzen, meticulous treatment of the soil on declivities, planes, furrows and beds, in order to collect the least bit of moisture, large plantings of opuntia, the fruit of which is dried and stored, planting of almond trees above all, more than 35,000 for some 300 inhabitants.

And this puts one on the track of an explanation. Not being able to be rendered by a display of lands for sowing, this recourse to the extensive, if one may say it, is expressed by the multiplication of the tree on open soil. Yet, in fact, not the least trace of an orchard technique is to be sought there: neither grooves draining the impluvium, nor "basin," tanut, nor, naturally, pruning, grafting, or selection. The planting visibly surpasses the maintenance faculties. The almond tree has been conceived in association with the forest, like the carob tree, and is inserted among oaks or lentisks. Another characteristic: these immense plaques of opuntia, which arise for certain -- the alignment by tiers below Amassin is one proof of it -- from a general taste rather than from the spontaneous dispersion of which local folk-
[262] lore makes the crow the agent. In the middle of August, and when the leaves of the aknari /209/ itself shrivel and curl up because of a lack of water, there will be a joyful debauch -- and the main nourishment of the day -- in going to gulp down these
[443] sweet fruits, difficult to approach, but occupying the stomach
[412] nicely. At this time of the year, the hawkers sell an incredible number of knives designed to peel the prickly skin. The gaiety
● [586] is expressed by a recrudescence of marriages. Divorces, it is true, will follow as soon as the year gives signs of inclemency.
243 The almond remains the principal wealth. But barley sometimes gives surprising results. According to a proverb of the

/264 cont./

423 pointed out in the Maghreb for a long time. In all this there is
629 an ensemble of closely related ideas which surrounds by its total
578 context our oath of boundaries. I might add that this last is of
[171] absolutely universal usage in Morocco, "Arab countries" included, and that it seems to have the characteristics of the most ancient institutional base.

423 On this level, we are fully in the atmosphere of "sworn law."
629 The "oath" acts naturally here as a very ancient mode of creation of the law. It is it that preserves the veritable ordered dustiness that, in the ancient equilibrium of the grounds, the infinite multiplicity of the patrimonial representation typifies. That is indeed a remarkable thing, and one that can give an idea of the most archaic bases of this agrarian life.

Other Juridical Gestures

000 The Seksawa system further knows a certain number of courses expressing the same genre of attitudes with decisive value.

586 A repudiated wife does not accept the marriage settlement
691 and the acquests that the husband has handed over to her. She makes a bundle of them and, in spite of the resistance of the chorus, justly disturbed, she "projects" it "to the heart of the jemâa." Consequently she is considered free of the consequences which the apprehension of the objects would have implied for her and which would have meant replevin for her. Quite the contrary, she henceforth poses as claimant, as suppliant. The jemâa feels obliged to intervene for her. As most often happens in similar cases, it is in a reconciliation -- that is, in juridical language, in a transaction -- that the scandal will end. The frequency of
691 this genre of denouements in the oldest atmosphere of the Maghrebi law, and this was on the occasion of litigations brought before the cadi, has struck all the observers. Paradox, one might think, in a society so contentious! But it is more instructive to see here the victorious rise of an old juridical base running through the modern proceedings. There would be the key to this procedural anomaly.

/341 cont./

584 3) the feast called asghurt: it gives to the ensemble its name, which etymologically evokes a "ritual cry."

Beyond the presents handed over on this occasion, arising from an economy of the gift and of the feasting, the young man owes to the girl during this period clothing and ornaments, according to the customary modalities. He contributes to her support at the domicile of her parents. In exchange, she owes him a certain intimacy in general not total, and joins him in various practices bringing into play age classes and rites of passage: young people's feasts and evenings, applications of henna. The unilateral rupture of this state by the young woman entails on her part the obligation to give back the gifts and expenses incurred.

585 b) The "nuptials," tameghra, include a ritual part, a statutory part, and a conventional part.

Ritual part:

1) The tarzift: the delivery of propitiatory gifts by the young man to his parents-in-law, giving rise to a "procession," and sometimes to simulated pillage;
2) the processional conveyance of the young woman to the marital house, this is the ɛid n-tslit;
3) the exposition of the dotal contribution of the bride, the ɛid uruku;
4) the utterance of the fɛtih'a, Koranic formula accompanied by wishes of good augury;

/342/ 5) The consummation: this is the ɛid ukechchum, sanctioned, if it is a matter of a virgin, by the yo-ho /Fr. youyou/ of the matron on duty, taghorit, and a new gift, lh'aqq n-ɕɕbɛh'.

Statutory part:

585 675 586 1) Conclusion of the amerwas: promise by the bridegroom to the bride to have to pay her, in case of dissolution of the marriage, a sum uniformly fixed by the custom of each tribe, and varying from one to the other: in Seksawa, 6.50 for a virgin, 3.25 for a nonvirgin;

/342 cont./

585 [428] 2) Right henceforth acquired by the wife to her part of inheritance anticipated by the law, that is, half of one part of the male heir, conforming to the fiqh. Her right to the acquests remains dependent on an extension of one year of common life.

Conventional part (and facultative in principle):

1) The chchard', "stipulated marriage settlement" by the bridegroom for the benefit of the bride;

2) The taking in charge, by the same, of the jihaz, "contribution of the bride into the community."

[788] [779] An official report of these conventions is drawn up in this case by literate men when the fātih'a is pronounced; this is the only moment when an atmosphere of religious law reigns. A moment short and eccentric, in the proper sense of the term.

c) The "conjugal state," litihal. Its first aspect, to which are attached magical, sentimental, and moral notions, is that of cohabitation and procreation.

585 421 Under its second aspect, which is that of a society of work, it includes the right of the woman to her share of acquests (tizzla) among the other participants in the familial society (imezzalen), in equality with each of the latter, men or women, and once the deduction has been made for the contribution of the ones and the others. The marital contribution counts officially for a half out of the ensemble of acquests. That is a patrimonial praecipuum.

[562] The woman's right to her share is regarded as the counterpart of the tasks that custom imposes on her, according to a rigorous discrimination with regard to those that fall to the men. Today it is likewise regarded as compensation for the statutory modicity of the amerwas. This, however, is undoubtedly a reinterpretation.

586 562 d) "Dissolution," uluf. The repudiation pronounced by the man is always definitive. The woman's liberation is authorized by the delivery of a document, tabrat, which she often requests by the judiciary route at the same time as her share of acquests. The woman may, as in the fiqh, judicially request the dissolution of the marriage on grounds (cruelty, impotence, etc.), submitted

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586 562 to the evaluation of the magistrates. But in Seksawa she can obtain it on simple incompatability, which constitutes an exorbitant originality in relation to the fiqh.

As an orf judge said, only the woman may be the judge of the d'd'arar ddakhili, that is, "hidden objections." An original vein of protective tenderness with regard to daughters and sisters circulates here in /343/ the customs. It is so notable that, the regularization of this practice having been brought about by tribal deliberation in 1949, the jemāa unanimously, with one exception, manifested its formal agreement. The isolated one was from the Bas /Lower/ Seksawa. A man from Arab confines.

Comparison with Orthodox Marriage

585 171 While there can be no question here of a historical comparison between the Chleuh /Shluh/ institution and the Mussulman institution, as it is presented in theory on the one hand, in Moroccan practice on the other, one immediately notices certain differences.

First of all, a difference of profile in time. The conclusion of the orthodox nikāh' is sanctioned by the payment of at least a part of the ṣadāq /ṣadāq/. This is incontestably its point of departure. Nothing is less true of Chleuh /Shluh/ marriage, where the nuptials are preceded by what I have called a prenuptial stage, which is not always today, and in any case seems not to have been formerly, exclusive of the sexual act. But let us not dwell on this question; it could be suitably treated only in the perspectives of the Berbère /Berber/ comparativism that a recently opened controversy over "Kabyle betrothal" (1)

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584 171 114 1. I am thinking of the malicious criticisms by G.-H. Bousquet, Justice française et coutumes kabiles /French justice and Kabyle customs/, 1950, p. 63. If, however, on a juridical plane, they appear decisive, I wonder if the question would not merit being thoroughly examined on the plane of general ethnology. A. Magdelain,

/344 cont./

585 675 171 Even more instructive is the indefinite bringing forward of the payment of this amerwas, deemed to correspond to the ṣadâq. It is known that in fiqh at least a part of the ṣadâq must be paid in cash. Absolutely not in the Sous. The fact that the payment of the amerwas as regards the totality is to be postponed there until the dissolution of the marriage: 1) clearly dissociates it from the consummation of the marriage, and thus even removes it from its orthodox role of canonical purifier of the sexual act (2);

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2. And nevertheless a "marabout" jurist such as an-Nâṣirî, Ajwiba, ms. of the zaouia of the Mez'ud'a, p. 40, l. 14, must consider that the indefinite carrying forward of the integrality of the ṣadâq (in this case the amerwas) is without inconvenience and does not render the marriage illicit.

Let us recall — without, of course, wishing to establish a comparison — that Moroccan Hebraic law brings these diverse notions together under the name of kitubba. The latter, quite like the Berbère /Berber/ amerwas, is demandable only in case of dissolution of the marriage. The "forfeiture" aspect is moreover more pronounced it it. Cf. on the kitubba, E. Malka, "La constitution du douaire par contrat de mariage /The constitution of the marriage settlement by marriage contract/," Revue marocaine de droit, 1952, pp. 209 sq.

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2) leads one to seek in other traits of Chleuh /Shluh/ marriage the veritable inaugural formalities.

The invariability of the amerwas in one and the same tribe (3)

3. Westermarck has already noted it. Les cérémonies du mariage au Maroc /Marriage ceremonies in Morocco/, 1921, pp. 61, 67. He even gives a

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/footnote 3 continued/ remarkable example: that of the Glâwa, where his quantum varies according to the subgroups (p. 62). In case of flight by the married woman, the rate of compensation varies, he writes, according to the tribes or the subdivision of tribes (pp. 57 sq.). The Arab jurists cite the practice of an invariable ṣadâq as tainted by Bedouinism. Cf. at-Tasûlî, Comm. Tuh'fa /Commentary of the Tuh'fa/, 1355 ed., t. I, p. 247, l. 6 sq., and 27 sq., with citation of this Abû ᶜAlî whom we always find as revealer of Moroccan authenticity: lâ yuzâdu ᶜalay-hi li-jamâli-ha wa lâ yanquṣu li-qubh': "beauty or ugliness is of no importance," the famous cadi says, smiling a little!

is the second of the characteristics that set it opposite the ṣadâq. The amount of the /345/ latter in Arab countries is not statutory, but contractual. But has it always been the same? Here again we find, attested to by the jurists, an ancient Bedouin stage, where the practice of a ṣadâq, invariable and payable only upon the dissolution of the marriage, would have been general at a certain time, since authorities as scattered as Ibn ᶜArafa (Tunis), al-Qawrî (Fès), and cadis of Sijilmâsa are cited with respect to this (1).

1. At-Tasûlî, Comm. de la Tuh'fa, 1355, t. I, p. 250, l. 4 sq.

Indications Concerning the Anterior State

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In any case, the uniformity and modicity of the amerwas, its liaison, not at all with the consummation, but indeed with the dissolution of the marriage, lead, at least for the Chleuh /Shluh/ group, to the hypothesis that it may be a matter here of an element superposed, perhaps by way of authority, upon an

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675 autochthonous institution, survivals of which are to be found in
585 the asghurt and where it would as yet be only incompletely dis-
586 solved. The comparison of the institutions only ends in an im-
121 passe there, for we are back to the historical problem of the penetration of the fiqh in this region of Morocco.

779 To the dossier, still quite light, of this discussion, I shall
792 bring only one contribution, but precise and datable: this is a
175 text taken from the Nawâzil of the Cheikh /Sheik/ Mah'ammad
585 ibn Nâçir (d. 1674), master of a great religious brotherhood, and
675 initiator from the Moroccan South. /The following paragraph is in small type in the original source./ The Cheikh married persons who had come to rely on him. He began by questioning two among them, who were of the same tribe, on the amount of the çadâq in their country at the same time as on their matrimonial usage. After many silences, they answered him, "We are of your faith and your flock. Do what you judge good to do." "As for us," said the Cheikh, "our practice is simple. I myself once gave one of my female relatives in marriage without asking for anything more than a dish of couscous for the clerks. Such was in fact the custom of our ancestors. But I have reformed it and abandoned it in order to adhere to the sunna of the Prophet. Our present practice is one of the simplest, be it a matter of the banquet or of the çadâq. I have fixed the latter at three mithqâl-s of money by weight." He then added: "Where is the representative of the husband?" He was pointed out to him. He then requested witnesses, and when they were before him, in the presence of the representative of the woman, he declared: "Praise God. We praise Him and by Him we guide ourselves. Witness that I have married such-and-such a daughter of so-and-so and such-and-such a son of so-and-so, both from such-and-such a country, within the rights and stipulations of the woman, the sunna of the Prophet, and against legitimating çadâq (2)."

2. Mah'ammad b. Nâçir ad-Dar^{c}î, Ajwiba, ms. of the zaouia of the Mez'ud'a, p. 40, l. 11 sq.

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671 [779] thirteenth century, it creates the communal convention. It is by a contract.

One thing nevertheless remained inassimilable even though it tried to absorb it into the accommodating Malékite /Maliki/ opportunism of the maçlah'a. This is the faculty of legislating (1).

1. De Ligniville, "La coutume privée des ait ᶜAt't'a du Sahara /The private custom of the ait ᶜAt't'a of the Sahara/," in CHEAM, 1937, gives interesting details on some important legislative modifications decided by means of ekklêsia: right to inherit granted to the woman, the suppression of the character, executory with respect to marriage, that was given to the application of henna to the conjoints, the husband's designation of ten men prohibited to the repudiated wife, alleviation of the levirate, the introduction of the waly, etc.

[421] [586] 671 794 Laic faculty in its foundation, democratic in its exercise, unlimited in its applications. Two examples of it have already been cited: a procedural deliberation over property, and another over the status of the wife and her right to autorepudiation. Two other deliberations, quite recent, have governed the distribution of the offerings of Lalla Aziza and of Sidi Mh'and of Ammern. In both cases the jemâa of the Seksawa had to be aware of the finances of its saints. And although these deliberations have been provoked in our day by a foreign initiative, on grounds a little experimental, they nonetheless include a lesson. It was only to observe the naturalness, the gravity with which the assembly took hold of matters so exorbitant of everyday life — at least to our eyes — in order to understand that to its people its competence extended not only /384/ to the temporal administration, not only to the status of persons and goods, to the whole matter of the

554 /224 cont./
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[692] /footnote 2 continued/ sullied by partiality than that of the inflas, whose rapacity is feared.

[585] [586] [428] Marriages and divorces are concluded in his presence. He conducts the proceedings for the apportionment of inheritances and then appropriates a small part of the estates. He punishes according to the ᶜorf -- the custom -- crimes and offenses, and [681] imposes the fines that are proper for each mistake. The money thus collected is divided into three parts: the first goes to the moqaddem; the second is for the taqbilt, which the inflas consider that they represent completely in this circumstance; the last part constitutes a small reserve fund for the expenses of hospitality.

The moqaddem's authority varies according to his wealth [292] and personal situation. If he is already, because of the power [613] of his "ikhs," an important notable, he is seen, clothed in garb /225/ of white wool, which manifests his high rank, to delib- [571] erate, to fix the round of hospitality, to accept the "ᶜar" [754] /protector relationship based on a conditional curse/ of foreigners [574] who ask for protection, and to have given to one who offers him [43] a sacrifice some grain and walnuts by contribution of the whole canton. He concludes alliances with neighboring cantons and [628] presides at the "tinoubga," festivals given on the occasion of [574] visits by foreign warriors. If the moqaddem, on the contrary, is a man without influence, he effaces himself before the "inflas" or the "ᶜawan," who compete to have all the disputes settled to the advantage of their family. When the year has passed, the [666] moqaddem brings the inflas together and calls for his replacement. As an exception his post is renewed for a year, "if his magistrature has been happy," but never longer.

[178] As a result of the general tendency toward the development of personal power, people in the Haut-Atlas /High Atlas/ in our day somewhat scorn the effaced moqaddems who abide by the ancient tradition, according to which they would be only the agents of their brothers. One who does not know how to speak